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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 329.

PHILIP OSCAR SCHWANER,
Petitioner,

vs.

JOHN C. O'DONNELL, JR.,
Trustee in Bankruptcy,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION.

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REASONS FOR DENYING THE WRIT.

Respondent submits the following grounds for the denial of the Writ of Certiorari.

(1) A review on a writ of certiorari is not a matter of right, but one of sound judicial discretion and will be granted only where there are special and important reasons therefor. This petition does not bring anything new or special before this Court. The referee's actions and orders, in the course of this administration, particularly relating to the disposition of the funds in the trustee's possession, unequivocally follow the pertinent sections of the bankruptcy act and the interpretations of their meaning by the courts in many decisions. The Bankruptcy Act invests bankruptcy courts with equitable jurisdiction, which extends to a disposition of surplus assets, and in

the exercise of same, it is the duty of the court to return any surplus to the bankrupt after costs of administration and the proven creditors are paid in full.

(2) The decision of the United States Court of Appeals for the Sixth Circuit as of April 19, 1966, is not in conflict with the decisions of another Court of Appeals. The following are part of the reported decisions of the Courts of Appeals.

Burton Coal Co. vs. Franklin Coal Co., 24 Am. B. R. (N. S.) 4 (8th Circuit CCA), 67 Fed. 2nd 796;

Johnson vs. Norris (CCA-5th Circuit), 190 F. 459, L. R. A. 1915B-884;

Berl vs. Crutcher (CCA-5th Circuit), 21 Am. B. R. (N. S.) 720, 60 Fed. 2nd 440, cert. denied, 287 U. S. 670, 77 L. Ed. 578, noted, 1932 Col. L. Review 1425 and (1934), 32 Mich. L. Rev. 400;

Henrdie vs. Lowmaster (CCA-6th Circuit), 152 Fed. 2nd 83.

(3) The April 19, 1966 decision of the United States Court of Appeals for the Sixth Circuit is not in conflict with the applicable decisions of this Court and does not raise an important question of law which has not been previously settled by this Court, as shown by this Court's denial of a writ of certiorari in the following case.

Berl vs. Crutcher (CCA-5th Circuit), 21 Am. B. R. (N. S.) 720, 60 Fed. 2nd 440, cert. denied, 287 U. S. 670, 77 L. Ed. 578, noted, 1932 Col. L. Review 1425 and (1934), 32 Mich. L. Rev. 400.

(4) The April 19, 1966 decision of the United States Court of Appeals had not so far departed from the accepted and usual course of judicial proceedings or so far sanc-

tioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

Respondent respectfully requests that this Court deny this petition for writ of certiorari.

Respectfully submitted,

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Mansfield, Ohio,
Attorney for Respondent.